

REMARKS

Upon entry of this Amendment:

- Claims 2-24 will be pending
- Claim 1 will be cancelled
- Claims 2-4, 7, 10, and 23 will be amended

Claims 2-24 Are Allowable

We are grateful for the Examiner's statement that Claims 2-24 contain allowable subject matter. In accordance with the Examiner's Office Action, a terminal disclaimer has been filed, rejected Claim 1 has been cancelled, and Claims 2-4, 7, 10, and 23 have been amended to overcome the Examiner's objections. We respectfully submit that Claims 2-24 are in condition for allowance.

Claim Objections

The Examiner objects to Claims 2-4, 10, and 23 because "the claimed limitation 'at least the final set of cards' should be corrected to 'the final set of cards.'" [Office Action, page 2]. We respectfully note that there is no informality in these claims. The claim language clearly indicates that a payout is determined based on the final set of cards and possibly one or more other factors—i.e., based on at least the final set of cards. However, we have amended Claims 2-4, 10, and 23 to remove "at least" to overcome the objection. It will still be understood from the amended claim language that determining the payout based on the final set of cards encompasses embodiments in which determining the payout may be based on one or more

factors in addition to the final set of cards. The amended language includes but is not limited to embodiments in which determining the payout is based only on the final set of cards.

The Examiner objects to Claim 7 because “the claimed limitation ‘at least one secondary set’ should be corrected to ‘secondary set.’” [Office Action, page 2]. We have amended Claim 7 to overcome the Examiner’s objection.

We request the objections to Claims 2-4, 7, 10, and 23 be withdrawn.

Double Patenting Rejection–Terminal Disclaimer Filed

The Examiner rejects Claims 1-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over specified claims of U.S. Patent No. 6,592,456.

While we do not agree with this rejection, a terminal disclaimer is filed concurrently with this Amendment solely to expedite the issuance of the present application. Accordingly, the double patenting rejection of Claims 1-24 is moot.

We note that we traverse the Examiner’s assertion that it would have been known to determine a second payout based on the claimed secondary poker hand. The Examiner has not provided any evidence in support of this assertion. The Examiner has not provided any evidence that it would have been obvious to remove the indicated limitations. Accordingly, the Examiner has failed to establish a *prima facie* case of double patenting of any of the pending claims.

Section 103(a) Rejection of Claim 1

Claim 1 is rejected as being unpatentable over Moody (U.S. Patent No. 5732950). We traverse this rejection. Moody does not teach all of the features of Claim 1. The Examiner has failed to establish evidence of record that all of the features of Claim 1 were known. The Examiner has failed to provide evidence of the asserted motivation to provide for the feature the Examiner admits is not disclosed in Moody. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness of Claim 1.

However, Claim 1 has been cancelled without prejudice or disclaimer solely to expedite issuance of all of the remaining claims (Claims 2-24) that the Examiner has indicated contain allowable subject matter. We intend to pursue the subject matter of Claim 1 in one or more other applications.

Conclusion

It is submitted that all of the pending claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

November 16, 2005

Date

Michael Downs
Michael Downs
Attorney for Applicants
Registration No. 50,252
mdowns@walkerdigital.com
(203) 461-7292 /voice
(203) 461-7300 /fax